

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE CRIMINAL JURISDICTION

CRIMINAL APPEAL NO. 511 OF 1999
WITH
CRIMINAL APPEAL NO. 422 OF 1999

The State of Maharashtra.

.... APPELLANT
(ORI. COMPLAINANT)

// VERSUS //

- 1] Sanjay Rajaram Agvile
Age about 23 years,
Occ: Agriculturist.
- 2] Kailas Rajaram Agvile,
Age about 22 years,
Occu: Agriculturist.
- 3] Baban Bhairu Agvile,
Age about 22 years,
Occu: Agriculturist.
- 4] Vijay Anant Agvile,
Age about 21 years,
Occu: Agriculturist.
- 5] Sunil Haribhau Agvile,
Age about 21 years,
Occu: Agriculturist.

(All residing at Agvile Vasti at
Garade Vasti, Tah. Purandar, Dist. Pune)

.... ACCUSED
RESPONDENT(S)

Mrs M.M. Deshmukh A.P.P for the Appellant
Mr. Ganesh Gole, Advocate for the Respondent Nos. 1 to 5.

CRIMINAL APPEAL NO. 422 OF 1999
WITH
CRIMINAL APPEAL NO. 511 OF 1999

- 1] Sanjay Rajaram Agvile,
Age about 23 years,
Occupation: Agriculturist.
- 2] Kailas Rajaram Agvile,
Age about 22 years,
Occupation: Agriculturist.
- 3] Baban Bhairu Agvile,
Age about 22 years,
Occupation: Agriculturist.
- 4] Vijay Anant Agvile,
Age about 21 years,
Occupation: Agriculturist.
- 5] Sunil Haribhau Agvile,
Age about 21 years,
Occupation: Agriculturist.

All resident of Agvile Vasti at
Garade Vasti, Tal. Purandar, Dist. Pune.
[At present in Yerawada Central Prison, Pune]

.... **APPELLANTS**

// VERSUS //

- 1] The State of Maharashtra.
- 2] Nandu Raosaheb Yadav,
Age about 35 years,
Occupation : Agriculturist.
R/at Garade, Agvile Vasti,
Tal. Purandar, Dist. Pune.
- 3] Babasaheb Martand Agvile,
Age about 60 years,
Occupation: Agriculturist,
R/at Garade, Agvile Vasti,
Tal. Purandar, Dist. Pune.

.... **RESPONDENT(S)**

Mr. Ganesh Gole, Advocate with Mr. Bhavin Jain for Appellants.
Mrs. M.M. Deshmukh, APP for Respondent No.1.

CORAM : S.S. SHINDE &
N.B. SURYAWANSHI, JJ

JUDGMENT RESERVED ON : 24/01/2020
JUDGMENT PRONOUNCED ON : 27/02/2020

ORAL JUDGMENT : [Per : N.B. Suryawanshi, J]

Criminal Appeal No. 511/1999 is filed by the State, challenging the acquittal under Sections 147, 307 read with 149, 302 read with 149 of the Indian Penal Code recorded in favour of the respondent Nos. 1 to 5. However, the respondents /original accused were convicted under Sections 143, 147, 148, 326 read with Section 149 of the Indian Penal Code. Criminal Appeal No. 422/1999 is filed by the Original Accused challenging their conviction.

2] The prosecution case, in short, is that :-

The complainant and deceased Satyawar were agriculturist. On 02.09.1997, the complainant, deceased Satyawar and his brother Ramesh were working in the agricultural land. They all returned to home after the work was finished. Satyawar wanted to transport the vegetables and tomatoes to the city. He wanted to hire tempo for that purpose. His friend

Nandu Yadav, the injured witness(PW.4) came to the house of Satyawar and they both left at 7.30 p.m. to look for the Tempo. While proceeding towards Village Garade, they were near the land of Gulab Jagdale. At that time, all the accused obstructed them. The accused came from bushes and shrubs, which were between the road and the land of Gulab Jagdale. The accused were holding deadly weapons, such as axe, swords, sticks etc. Accused No.1 was holding Axe, Accused No.2 was holding sword, Accused No.3 was holding the chain, Accused No.4 was holding the Axe and Accused No.5 was holding the Stick. All the accused started assaulting Satyawar and Nandu Yadav. Though Nandu Yadav (PW. 4) tried to intervene, but he was assaulted. The accused persons have abused Satyawar in filthy language and were saying that they will teach lesson to Satyawar, as he has quarreled with their wives and accused will murder him. Because of the assault, Satyawar and Nandu fell down. Still the accused continued giving kick and fist blows to them. Thereafter, the accused left for their village after the incident. Satyawar and Nandu Yadav both suffered bleeding injuries. Satyawar was lying in the pool of blood. Nandu Yadav went to his house and apprised his wife about the incident and requested her to inform the incident to Satyawar's father, accordingly, Ranjana (PW.5) wife of Nandu went to the house of Babasaheb and informed him about the incident. The complainant and others rushed to the land of Jagdale and saw that Satyawar was lying in the pool of blood. He was removed from there, placed in the jeep and then all went to the house of Nandu Yadav. They collected Nandu Yadav and then

complainant went to Saswad Police Station. As the condition of Satyawar was critical, police gave Yadi and referred both of them to hospital at Saswad. Nandu was semi-conscious and Satyawar was though conscious but was in shock. After reaching the hospital within 10 minutes, Satyawar succumbed to the injuries. Nandu Yadav on the way from his house to the police station disclosed the name of the accused as assailants to complainant - Babasaheb. Within three hours of incident, complainant - Babasaheb lodged complaint with Saswad Police Station. It was registered as Crime No. 47/1997 under Section 302, 326, 143, 147, 148, 149 of the Indian Penal Code. The investigation commenced. The investigating officer, during investigation, drew spot panchanama and seized blood stained clothes of the deceased as well as of the injured. The post-mortem on the dead body of Satyawar was conducted, in which the doctor gave cause of death as, hemorrhagic shock due to multiple injuries and depressed fracture of left frontal bone. The accused were arrested and blood stained clothes on their persons were seized under panchanama. The weapon used in the offence were discovered at the instance of accused and all the articles were sent to Chemical Analyser. The chemical analyser's report confirmed that blood stains on the articles and clothes is of human. After completion of the investigation, the charge sheet came to be filed. Since the matter was exclusively triable by the Court of Sessions, the matter was committed to the Sessions Court. Charge was framed against the accused and the defense of

the accused was of total denial and they claimed that only on suspicion they are falsely implicated.

3] Prosecution examined 10 witnesses in support of his case. P.W. 1 Babasaheb Agvile is the complainant and father of the deceased who lodged the complaint(Exhibit No. 19), P.W. 2 Ramesh Babasaheb Agvile, who is the brother of deceased and to whom the accused gave threat. P.W. 3 is Dr. Savita Babasheb Gokhale, who conducted Post-Mortem and also examined P.W-4 Nandu Yadav, the injured witnesses and issued injury certificate at Exhibit No. 22. P.W. 4 Nandu Yadav, is the injured eye witness and P.W. 5 is the wife of P.W.4. P.W. 6, 7, 8 and 9 Panchas to the seizure of weapon, spot panchanama and to the recovery of weapons from the accused persons. P.W. 10 is the PSI Sasne who was the investigating officer.

4] Heard learned counsel for the appellants and the learned A.P.P for the State. With the able assistance of the learned counsel for both the sides, we have perused the appeal memo, grounds raised in the same and the original record including the notes of evidence.

5] The learned counsel for the appellants vehemently argued that the conviction recorded by the learned trial Court is unsustainable. The prosecution has failed to prove its case beyond reasonable doubt and there are serious lacunas in the prosecution case. The recovery is not believable

and the evidence would suggest that the accused are falsely implicated in the offence. In fact, though there was dispute between complainant Babasaheb's family and accused, one year prior to the incident in respect of damaging of fodder of Babasaheb by the cattle of accused, PW.1 has admitted that compromise had taken place after the said incident between the family of Babasheb and accused, hence there was no occasion for the accused persons to assault Satyawar. He would further urge that in view of admission of PW.1 that his F.I.R. was registered at Police at 11.30 p.m. Before lodging the said F.I.R., his failure to disclose the incident in any manner to anybody who were accompanying him while carrying deceased and injured in a jeep, casts serious doubt on the prosecution case. He further states that in view of the admission of the PW.1 that the incident took place on the next day of Amawasya, there was no light in the house of Gulab Jagdale, there were no lights on the road leading to Gulab Jagdale's land. In that view, the prosecutions' version that the accused persons assaulted the deceased and the injured PW.4 is doubtful. Learned counsel for the appellants, therefore submits that the impugned judgment and order of conviction is unsustainable and the appeal of the original accused deserves to be allowed.

In the alternate, he would submit that in case this Court comes to the conclusion that the conviction recorded by the learned trial Court is proper, taking into consideration the fact that the accused persons were young at the time of commission of offence and considering the fact that the incident has taken place in the year 1997, more than 22 years have passed

and the accused persons are settled in their life and have no criminal antecedents. They have not misused the facility of bail and there is no criminal offence registered against them, after they were released on bail. Considering these aspects, they may be released on the period already undergone. He submits that they have undergone two years of imprisonment till they were released on bail. Learned counsel further submits that the sentence imposed on the accused persons by the learned trial Court is harsh and excessive and considering the young age and absence of criminal antecedents of the accused, the learned trial Court ought to have imposed lesser sentence.

6] Per contra, learned A.P.P. would submit that the learned trial Court ought to have convicted the accused persons under Section 302 read with Section 149 of the Indian Penal Code as admittedly, Satyawar died on account of assault by the accused persons with deadly weapons. She further submitted that there is cogent and reliable evidence of P.W. 4 who has described the incident of assault by giving minute details and nothing is brought on record to shake his credibility. She, therefore, states that the impugned judgment passed by the learned trial Court needs to be interfered by imposing punishment under Section 302 read with Section 149 of the Indian Penal Code on the accused persons.

7] We have minutely perused the evidence brought on record by the prosecution and we are convinced that sufficient evidence is brought on record by the prosecution to sustain the conviction of the accused. There is direct evidence of P.W.4 the injured eye-witness who has given the detail account of the manner in which he and Satyawar were assaulted by the accused persons. Satyawar has suffered 13 injuries including CLW, Incised wound, Abrasion and fracture of left Tibia middle 1/3rd bleeding present. Though the injuries suffered by Satyawar were on cheek, middle finger, left thigh, left patella, left popliteal fossa, on right heel fracture of tibia and fibula on heel right knee and left tibia, the death of Satyawar occurred due to hemorrhagic shock due to multiple injuries. Thus, the version of P.W.4 in respect of incident is corroborated by medical evidence. So also, the injuries suffered by P.W.4 were also proved on record which confirms the presence of P.W.4 at the time of incident.

8] The recovery of weapons from the accused persons i.e. from A-1 Axe, A-2 Sword, A-3 Iron Chain, A-4 Axe and A-5 Stick has been duly proved by the prosecution. In terms of Chemical Analyser Report, the blood group of P.W.4 was "O", and of accused No. 5 was "AB". The chemical analyzers reports confirmed blood on the weapons as well as on the clothes of deceased and accused. Mostly blood of blood group "O" was found on the articles sent to the Chemical Analyser. This also corroborates the prosecution case.

9] The evidence of P.W. 5 Ranjana corroborates the evidence of P.W.4 Nandu who deposed that on the date of incident i.e. 2.9.1997 at about 8.30 her husband P.W.4 came in injured condition and on inquiry he disclosed that all the accused persons assaulted him and Satyawar with Sword and Stick and therefore she went to inform the same at the house of Satyawar.

10] We are not impressed by the submission of the learned advocate for the accused that since there were no lights, it was not possible for the P.W.4 to identify the accused. In view of the fact that the accused and P.W.4 and deceased were resident of the same village and as the accused persons were well acquainted with the P.W. 4, there is no force in the said submission and we are not inclined to accept the same. In view of cogent and reliable evidence brought on record by the prosecution, it can be safely said that the accused are liable to be convicted. The question is whether they are liable to be convicted under Section 302 or under Section 326 of the Indian Penal Code.

11] In view of the medical evidence on record, it is clear that all the injuries suffered by the deceased were on non-vital parts. The injuries were on left cheek, left middle thigh, below left knee joint, tibia etc. The size of the injuries and its location shows that not a single injury was on vital part and was fatal. The death of Satyawar has occurred due to shock. The

medical officer has admitted in his cross-examination that internal damage i.e. depressed fracture of frontal bone was not associated with any external injury. The said depressed fracture of frontal bone is possibly caused due to fall of the deceased on the ground and the same cannot be attributed to any of the accused person. It is not the prosecution's case that Satyawar was assaulted by the accused on head. There was no injury on head and the medical officer has admitted this fact. In this view of the matter, the said internal injury of fracture of skull bone cannot be attributed to the accused persons. The learned trial Court has convicted the accused under Section 326 read with Section 149 of the Indian Penal Code and imposed 7 years imprisonment and fine of Rs. 2,000/- each on the accused persons, so also under Section 324 read with Section 149 of the Indian Penal Code, awarded two years rigorous imprisonment and imposed a fine of Rs. 500/- each on the accused persons.

12] In the light of above observations, we find that the conviction recorded by the learned trial Court under Section 326 and 324 of the Indian Penal Code is proper and the same is not liable to be interfered with. We are also not inclined to accept the argument of the learned APP that in this case, the learned trial Court ought to have given conviction under Section 302 of the Indian Penal Code. As we have already observed that since the assault by the accused persons on the deceased was on non-vital parts, the conviction of

the accused cannot be enhanced. The accused cannot be convicted under Section 302 of the Indian Penal Code.

13] Taking into consideration the peculiar facts and the manner in which the incident has taken place in the year 1997, all the accused persons were of young age between 19 to 23 at that time and since more than 22 years have lapsed from the date of incident, the nature of crime, the location of injuries and all the other attending circumstances and relevant facts including that no subsequent untoward incident is reported against the accused persons and that they have undergone imprisonment of two years and are settled in their life and are leaving peacefully, we are inclined to reduce the sentence of imprisonment to the period already undergone. We find that it would not be proper at this stage to send the accused persons behind bars. However, at the same time, the interest of the victim also needs to be taken into consideration. Hence, the following order:-

ORDER

- 1] Criminal Appeal No. 511/1999 is dismissed.
- 2] Criminal Appeal No. 422/1999 is partly allowed.
- 3] The sentence awarded to the appellants/accused persons for the offences punishable under Sections 326 read with Section 149 of the Indian

Penal Code and Sections 324 read with Section 149 of the Indian Penal Code will stand reduced to the period already undergone. The appellants / accused shall be liable to pay enhanced fine amount at the rate of Rs. 30,000/- each, in addition to the fine already imposed by the learned trial Court.

4] On depositing the fine amount by the accused, an amount of Rs. 1,25,000/- be paid to the heirs of deceased Satyawar and an amount of Rs. 25,000/- be paid to injured P.W.4 Nandu Yadav. On failure of the appellants/accused to pay the fine amount, they shall be liable to undergo R.I. for one year.

JUDGE

JUDGE

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